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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 11 ANTHONY TORRES,

Case No.: 2:21-cv-00046-JAD-NJK

12 Plaintiff,

13 vs.

14 GUSTAVO CONCHAS, individually; THE
FISHEL COMPANY, an Ohio Foreign
15 Corporation; DOES 1 through 20, inclusive; and
16 ROE BUSINESS ENTITIES 1 through 20,
inclusive,

STIPULATED PROTECTIVE ORDER

17 Defendants.

18
19 The parties to this action, Plaintiff ANTHONY TORRES ("Plaintiff") and Defendants
20 GUSTAVO CONCHAS and THE FISHEL COMPANY ("Defendants") (collectively, the
21 "Parties"), by their respective counsel, hereby stipulate and request that the Court enter a stipulated
protective order pursuant as follows:

22 1. The Protective Order shall be entered pursuant to the ***Federal Rules of Civil***
Procedure.

23 2. The Protective Order shall govern all materials deemed to be "Confidential
24 Information." Such Confidential Information shall include the following:

25 (a) Any and all documents referring or related to confidential and proprietary
26 human resources or business information; financial records of the parties;
27 compensation of Defendant's current or former personnel; policies,
28

procedures and/or training materials of Defendant and/or Defendant's organizational structure;

- (b) Any documents from the personnel, medical or workers' compensation file of any current or former employee or contractor;
- (c) Any documents relating to the medical and/or health information of any of Defendant's current or former employees or contractors;
- (d) Any portions of depositions (audio or video) where Confidential Information is disclosed or used as exhibits.

8 3. In the case of documents and the information contained therein, designation
9 of Confidential Information produced shall be made by (1) identifying said documents as
10 confidential in either parties' FRCP 26(a) disclosures and any supplements made thereto; (2)
11 placing the following legend on the face of the document and each page so designated
12 "CONFIDENTIAL;" or (3) otherwise expressly identified as confidential via written
13 correspondence. Both parties will use their best efforts to limit the number of documents
designated Confidential.

If either party objects to the claims that information should be deemed Confidential, that party's counsel shall inform opposing counsel in writing within thirty (30) days of receipt of the Confidential materials that the information should not be so deemed, and the parties shall attempt first to dispose of such disputes in good faith and on an informal basis. If the parties are unable to resolve their dispute, they may present a motion to the Court objecting to such status. The information shall continue to have Confidential status during the pendency of any such motion.

19 4. A party seeking to file a confidential document under seal must file a motion to seal
20 and must comply with the Ninth Circuit’s directives in *Kamakana v. City and County of Honolulu*,
21 447 F.3d 1172 (9th Cir. 2006) and *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092,
22 1097 (9th Cir. 2016).

23 5. The Court has adopted electronic filing procedures. Attorneys must file documents
24 under seal using the Court's electronic filing procedures. *See Local Rule IA 10-5.* Papers filed with
25 the Court under seal must be accompanied with a concurrently-filed motion for leave to file those
documents under seal. *See Local Rule IA 10-5(a).*

26 5. All motions to seal shall address the standard articulated in *Ctr. for Auto Safety* and
27 explain why that standard has been met. 809 F.3d at 1097.

28 Specifically, a party seeking to seal judicial records bears the burden of meeting the

1 “compelling reasons” standard, as previously articulated in *Kamakana*. 447 F.3d 1172. Under the
 2 compelling reasons standard, “a court may seal records only when it finds ‘a compelling reason
 3 and articulate[s] the factual basis for its ruling, without relying on hypothesis or conjecture.’ *Ctr.*
 4 *for Auto Safety*, 809 F.3d at 1097. (quoting *Kamakana*, 447 F.3d at 1179). “The court must then
 5 ‘conscientiously balance[] the competing interests of the public and the party who seeks to keep
 6 certain judicial records secret.’ *Ctr. for Auto Safety*, 809 F.3d at 15 1097.

7 There is an exception to the compelling reasons standard where a party may satisfy the less
 8 exacting “good cause” standard for sealed materials attached to a ~~discovery~~ motion unrelated to
 9 the merits of the case. *Id.* “The good cause language comes from Rule 26(c)(1), which governs the
 10 issuance of protective orders in the discovery process: ‘The court may, for good cause, issue an
 11 order to protect a party or person from annoyance, embarrassment, oppression, or undue burden
 12 or expense.’” *Id.* (citing Fed.R.Civ.P. 26(c)). “For good cause to exist, the party seeking protection
 13 bears the burden of showing specific prejudice or harm will result if no protective order is granted.”
Phillips v. General Motors, 307 F.3d 25 1206, 1210-11 (9th Cir. 2002).

14 The labels of “dispositive” and “nondispositive” will not be the determinative factor for
 15 deciding which test to apply because the focal consideration is “whether the motion is more than
 16 tangentially related to the merits of a case.” *Ctr. for Auto Safety*, 809 F.3d at 1101.

17 6. The fact that the Court has entered the instant stipulated protective order and that a
 18 party has designated a document as confidential pursuant to that protective order does not, standing
 19 alone, establish sufficient grounds to seal a filed document. *See Foltz v. State Farm Mut. Auto. Ins.*
Co., 331 F.3d 1122, 1133 (9th Cir. 2003); *see also Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d
 20 470, 476 (9th Cir. 1992). If the sole ground for a motion to seal is that the opposing party (or non-
 21 party) has designated a document as confidential, the designator shall file (within seven days of
 22 the filing of the motion to seal) either (1) a declaration establishing sufficient justification for
 23 sealing each document at issue or (2) a notice of withdrawal of the designation(s) and consent to
 24 unsealing. If neither filing is made, the Court may order the document(s) unsealed without further
 25 notice.

26 7. Confidential Information shall be held in confidence by each qualified recipient to
 27 whom it is disclosed, shall be used only for purposes of this action, shall not be used for any
 28 business purpose, and shall not be disclosed to any person who is not a qualified recipient. All
 produced Confidential Information shall be carefully maintained so as to preclude access by
 persons who are not qualified recipients.

1 8. Qualified recipients shall include only the following:

2 (a) In-house counsel and law firms for each party and the secretarial, clerical
3 and paralegal staff of each;

4 (b) Deposition notaries and staff;

5 (c) Persons other than legal counsel who have been retained or specially
6 employed by a party as an expert witness for purposes of this lawsuit or to
7 perform investigative work or fact research;

8 (d) Deponents during the course of their depositions or potential witnesses of
9 this case; and

9 (e) The parties to this litigation, their officers and professional employees.

10 9. Each counsel shall be responsible for providing notice of the Protective Order and

11 the terms therein to persons to whom they disclose "Confidential Information," as defined by the
12 terms of the Protective Order.

13 Persons to whom confidential information is shown shall be informed of the terms of this
14 Order and advised that its breach may be punished or sanctioned as contempt of the Court. Such
15 deponents may be shown Confidential materials during their deposition but shall not be permitted
16 to keep copies of said Confidential materials nor any portion of the deposition transcript reflecting
17 the Confidential Information.

18 10. No copies of Confidential Information shall be made except by or on behalf of
19 attorneys of record, in-house counsel or the parties in this action. Any person making copies of
20 such information shall maintain all copies within their possession or the possession of those
21 entitled to access to such information under the Protective Order.

22 11. Any party that inadvertently discloses or produces in this action a document
23 or information that it considers privileged or otherwise protected from discovery, in whole or in
24 part, shall not be deemed to have waived any applicable privilege or protection by reason of such
25 disclosure or production if, within 14 days of discovering that such document or information has
26 been disclosed or produced, the producing party gives written notice to the receiving party
27 identifying the document or information in question, the asserted privileges or protection, and the
28 grounds there for, with a request that all copies of the document or information be returned or
 destroyed. The receiving party shall return or destroy the inadvertently disclosed documents upon
 receipt of appropriately marked replacement documents.

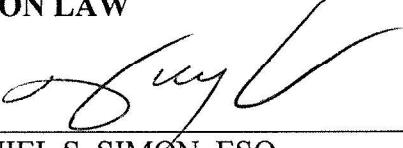
1 12. The termination of this action shall not relieve the parties and persons obligated
2 hereunder from their responsibility to maintain the confidentiality of information designated
3 confidential pursuant to this Order.

4 13. Nothing in this Order shall be construed as an admission to the relevance,
5 authenticity, foundation or admissibiliily of any document, material, transcript or other
6 information.

7 14. Nothing in the Protective Order shall be deemed to preclude any party from seeking
8 and obtaining, on an appropriate showing, a modification of this Order.

9 8 DATED this 1st day of February, 2022.

10 9 **SIMON LAW**

11 10 
12 DANIEL S. SIMON, ESQ.
13 Nevada Bar No. 4750
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15 Las Vegas, Nevada 89101
16 *Attorney for Plaintiff*

17 9 DATED this 10th day of February, 2022

18 10 **HONE LAW**



19 11 JOEL Z. SCHWARZ, ESQ.
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21 701 N. Green Valley Parkway, Ste. 200
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23 *Attorney for Defendants*

ORDER

The terms of the above stipulation for a protective order by and between Plaintiff ANTHONY TORRES and Defendants GUSTAVO CONCHAS and THE FISHEL COMPANY, by their respective counsel, shall hereby be the ORDER of this Court.

DATED this 14th day of February, 2022.

IT IS SO ORDERED.

United States Magistrate Judge